THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.21882 of 2005

Dated 19-12-2005

Between:

Maddala Rama Murthy and two others.

..... PETITIONERS

AND

The Commissioner of Police, Visakhapatnam,

and five others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.21882 of 2005

O R D E R:

This writ petition is filed seeking a declaration that the alleged action of the respondents 1 and 2-Police Officials in interfering with the civil disputes pertaining to the land admeasuring an extent of 560 square yards situated in Survey No.40 of Dondaparthy Village, Visakhapatnam, is arbitrary and illegal.

The petitioners claim to be the plaintiff Nos. 6, 8 and 4 respectively in O.S.No.619 of 1992 on the file of VII Additional District Judge, Visakhapatnam. The sixth respondent is the third defendant in the said suit. The suit, which was filed for permanent injunction restraining the defendants from interfering with the possession of the plaintiffs in respect of land to an extent of Ac.0-26 cents situated in

survey No.40 of Dondaparthy village, was decreed on 09-11-2004. The petitioners claim that they are in continuous possession of the property-in-question. The petitioners alleged that in spite of the said decree granted in favour of the petitioners, at the instance of the sixth respondent, the respondents 1 and 2 have been interfering with the possession of the petitioners in respect of the property-in-question.

This Court, while ordering notice before admission on 07-10-2005, directed the respondents not to interfere with the civil dispute between the petitioners and the sixth respondent pertaining to the property-in-question. That apart keeping in view the plea of the petitioners that the fifth respondent-Assistant Engineer, A.P. Transco Limited, has high handedly removed the meter from the premises in the property-in-question, this Court on 08-11-2005, while ordering Rule Nisi, in W.P.M.P.No.28081 of 2005, granted interim order directing the fifth respondent to restore the service connection to the premises.

On behalf of the respondents 1 and 2, the Sub Inspector of Police, IV Town Police Station, Visakhapatnam, filed a counter-affidavit denying all the allegations made by the petitioners and categorically stated that they are not at all interfering with the possession of the petitioners in respect of the property-in-question. It is also stated that they are also not interfering with the civil disputes between the petitioners and the sixth respondent, but they have only made the necessary enquiry on the basis of the representation dated 26-09-2005 made by the petitioners.

The fifth respondent filed a separate counter-affidavit stating that on 26-09-2005 the sixth respondent approached and orally informed them that the Municipal Corporation is going to demolish the construction in the plot and in the circumstances, the apparatus installed for release of service connection was removed for safeguarding the same on 27-09-2005.

However, the sixth respondent has come up with an altogether different version stating that he is the owner of the

premises in the property-in-question and is in continuous possession and that taking advantage of his absence for a short period, the petitioners have trespassed into the property and they also got the service connection restored.

Having heard the learned counsel for both the parties and having perused the material on record, it appears that with regard to the same property, a decree dated 09-11-2004 passed in O.S.No.619 of 1992 is subsisting as on today. The learned counsel for the sixth respondent states that it is an *ex parte* decree passed without issuance of notice to the sixth respondent and appropriate steps are being taken to get the said decree set aside. Be that as it may, as can be seen from the material on record, the matter involve several disputed questions of fact which cannot be enquired into and decided by this Court while exercising writ jurisdiction under Article 226 of the Constitution of India. Both the petitioners as well as the sixth respondent claim ownership in respect of the property-in-question. Therefore, it is neither proper nor possible for this Court to issue any positive directions to the fifth respondent with regard to the service connection claimed by the petitioners. However, the fact remains that by virtue of the interim direction dated 08-11-2005 granted by this Court, the service connection has already been restored to the premises in the property-in-question. In the circumstances, liberty is granted to both the parties to approach the fifth respondent and to make appropriate representations, in which event, the same shall be enquired into and appropriate action shall be taken by the fifth respondent, either to continue or to disconnect the service connection. It is also left open to both the parties to work out the appropriate remedies available under law so far as the rival claims made by them with regard to the property-in-question. So far as the allegations made by the petitioners against the respondents 1 and 2-police officials are concerned, it is made clear that they shall not interfere with the civil disputes without following due process of law.

With the above directions, the writ petition is disposed of. No costs.

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(**G. ROHINI, J**)

Date:19-12-2005

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